

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2842 OF 2006.
IN
FIRST APPEAL NO. 1444 OF 2006.

M/s.Ruplila Steels Pvt.Ltd. ... Applicant.

Versus.

1. Mohan Galani.
2. Kamal V.Galani.
3. Manoj V.Galani.
4. Yogesh P.Bhaktani.
5. Mukesh Galani.
6. Manohar Galani.
7. M/s.Wardekar Associates,
8. Avinash Wardekar
8. Soumitra Wardekar. .. Respondents.

Shri R.D.Soni i/by M/s.Ram & Co. for the Applicant.

Shri V.A.Thorat, Senior Counsel i/by M/s.Narayan &
Narayan for the Respondents Nos.1 to 6.

CORAM : ABHAY S.OKA, J.

DATED : 26th October, 2007.

P.C.:

1. This is an application for interim relief in the First Appeal which is admitted for final hearing. The challenge in the First Appeal is to the judgment and order dated 12th April 2006 passed by the learned 5th Joint Civil Judge, Senior Division, Pune, by which an Application made under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the said Code") by Respondents Nos.1 to 6 herein was allowed and order of attachment earlier granted by the trial

Court was vacated.

2. One M/s.Credential Finance Ltd. filed a suit in this Court against the Respondents Nos.7 to 9 herein for recovery of a sum of Rs.7,62,56,548/-. In the said suit on 22nd February 2000 an order of attachment was passed by this Court in respect of the land bearing Survey No.662, Hissa No.1 and 2 admeasuring 13 acres and 27 gunthas along with structures and buildings standing thereon and land bearing Survey No.665 admeasuring 11 acres and 5 gunthas along with the structures and buildings standing thereon situated at village Bibwewadi, District Pune. The said suit was decreed and the Plaintiffs in the said suit i.e. M/s.Credential Finance Ltd. filed an application for execution under Order XXI Rule 10 of the said Code in the Court of the Civil Judge, Senior Division, Pune. In the said application for execution the said property of the judgment debtors i.e. Respondents Nos.7 to 9 herein was attached. An Application was filed at Exh.49 by the Respondents Nos.1 to 6 herein for releasing the property from attachment. It was contended in the said Application that the Respondents Nos.1 to 6 by separate agreements executed on 15th May 1997 agreed to purchase the said property and under the said agreements, the Respondents Nos.1 to 6 were placed in possession. It is stated that the Respondents Nos.7 to 9 executed an

irrevocable power of attorney in favour of Respondents Nos.1 to 6. It is, therefore, submitted that even before an order of attachment was passed on 15th October 2001, there was a transfer of the said property by Respondents Nos.7 to 9 in favour of Respondents Nos.1 to 6. The learned trial Judge by the impugned order dated 12th April 2006 vacated the attachment in respect of the portion of the land admeasuring 5 acres and 6 gunthas out of survey No.662 and 665, more particularly described in the agreements dated 15th May 1997.

3. The prayer in this Civil Application is for stay of execution and operation of the impugned order and for continuation of the order of attachment.

4. The learned Counsel for the Applicants submitted that the agreements dated 15th May 1997 are only development agreements which do not create any interest in the property. The agreements itself provide that conveyance will be executed subsequently. He submitted that if interim order is not granted, the Appeal will become infructuous which will affect the execution proceedings filed by the Applicants.

5. The learned Senior Counsel appearing for the Respondents Nos.1 to 6 submitted that in view of sub-section (2) of section 64 of the said Code the

property subject matter of dispute could not have been attached. He placed reliance on the decision of the Apex Court in the case Salem Advocates Bar Association v/s. Union of India [(2005) 6 SCC page 344). He submitted that the entire consideration for sale of the property was paid in the year 1997 or in any case before the order of attachment, to the Respondents Nos.7 to 9 and there is already an irrevocable power of attorney executed by the said Respondents in respect of the said property in favour of Respondents Nos.1 to 6. He, therefore, submitted that the transfer was completed before the order of attachment was made. He, therefore, submitted that there is no merit in the Appeal and no case is made out for grant of any interim relief. He submitted that in any event ad-interim order of status-quo which is operating is much wider than the prayer made in this application. He, therefore, submitted that the application deserves to be rejected.

6. I have carefully considered the submissions. Reliance has been placed on the decision of the Apex Court in the case of Salem Advocates Bar Association by the learned Senior Counsel appearing for the Respondents Nos.1 to 6. It is submitted that sub-section (2) of section 64 protects the acts of private transfers or delivery of property contrary to attachment under sub-section (1) of section 64 provided the said acts are

made in pursuance of any contract for such transfer or delivery of the property entered into and registered before the attachment. He submitted that as there is an agreement for sale in respect of the properties subject matter of attachment before attachment is levied, even if a sale deed is not executed on the basis of the said agreements, the transfer made by the agreements before attachment are protected by sub-section (2) of section 64 of the said Code.

7. Coming back to the facts of the present case, the Respondents Nos.1 to 6 are relying upon agreements for sale executed by the judgment debtors on 15th May 1997. The question which will have to be decided in the Appeal is as regards the nature of the said agreements. In the said agreements, the 1st to 6th Respondents have been described as developers. There are some recitals to show that the transaction between the Respondents Nos.7 to 9 and Respondents Nos.1 to 6 may be of a development agreement and not of a sale. Whether by the said agreements there is a transfer of any right, title and interest in the property in favour of Respondents Nos.1 to 6 will have to be examined while deciding the Appeal finally. Therefore, till the final disposal of the Appeal, the property will have to be protected. Therefore, a case is made out for continuing the attachment of the property which was granted by the

Executing Court.

8. Accordingly, the following order is passed:

- i) The Application is allowed in terms of prayer clauses (a) and (b). It is clarified that the order of attachment dated 15th October 2001 passed by the Executing Court will continue to operate till the final disposal of the Appeal.
- ii) Hearing of the Appeal is expedited.

Judge.